Supreme Court, U.S.
FILED

041401 APR 13 2005

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Edward VanGuilder,

Petitioner,

v.

United States of America,

Respondent.

Petition for a Writ of *Certiorari*

To the U.S. Court of Appeals
for the District of Columbia Circuit

Edward VanGuilder, *pro se*
241 Fox Road
N. Granville, NY 12854
(518) 642-2448

The Question Presented

Procedural and Substantive Aspect

Does *City of Sherrill, NY v. Oneida Indian Nation of NY,* 544 US___(2005) BY NECESSARY IMPLICATION restate the Constitutional Law Legal Standing and Territorial Integrity of the complainant herein, *qua* an indigenous constitutional government still in occupation; and, correspondingly, entitle him, by operation of law alone, to the constitutional law remedy of ejectment, by way of declaratory relief *in lieu of* physical ejectment, in this Court?

Jurisprudential Aspect

Which is the basis for the rule of law, Constitutionalism, pursuant to which the *Constitution* as it is written governs until there has been either a Treaty (Article II, §2, cl.2) or an Amendment (Article V); or, Judicial Sovereignty, in furtherance of the *non sequitur* of Federal Sovereingty, pursuant to which the judiciary has the discretion not to apply the *Constitution* literally when doing so would be too politically disruptive?

Opinions Below

On March 29, 2005, the Court of Appeals below affirmed the District Court's decision and reasons that since indigenous sovereingty is subject to federal law, therefore the only Indian governments with legal standing are those constituted under federal law. Since my complaint is based upon constitutional law to exclusion of federal law, it summarily was dismissed for lack of legal standing to bring it.

Jurisdiction

The judicial Power exists to maintain the constitutional set of checks and balances which precludes the pretence of federal sovereignty. *Scott v. Sandford*, 19 How. 393 (1857); *City of Sherrill v. Oneida Indian Nation of NY*, 544 US _ (2005).

Statement of the Case

On the same day, March 29th, 2005, the Supreme Court held, in *City of Sherrill, NY v. Oneida Indian Nation of NY*, 544 US _ (2005), that

the same constitutional law category could not be *added to* federal domestic law.

Previously, the New York State Court of Appeals also had denied my legal standing on the precisely the same basis as the US Court of Appeals. I appealed and the Supreme Court denied my Petition for *Certiorari* SC #04-671.

Summary of Argument

Both the federal and state court systems of original jurisdiction have declined subject-matter jurisdiction. I have an arguable constitutional national right, which only the Supreme Court can address. The right connotes a remedy by operation of law alone, for this is a rule of law society and the law can not rule in the absence of judicial enforceability.

Argument

See, *The Mohawk and Mahican Nations v. The State of New York,* Original action motion, SC #(PENDING), and *VanGuilder v. NY, Certiorari* petition, SC #04-1161.

Relief Requested

I, Edward VanGuilder, seek a declaration acknowledging this Court's original action jurisdiction and a reference on the facts.

Reasons for Allowing the Writ

The genocide that this Court apprehended *de jure* in *Lara v. US*, 541 US _ (2004)(Thomas, J) and *City of Sherrill, NY v. Oneida Indian Nation of NY*, 544 US _ (2005), *de facto* continues.

This Court should settle the jurisprudential basis of the rule of law. The choice is between Constitutionalism as established by this Court *Scott v. Sandford*, 19 How. 393 (1857), and the aberration of Judicial Sovereignty in furtherance of the *non sequitur* of Federal Sovereingty.

April 7, 2005. **Respectfully submitted,**

/s/
Edward VanGuilder

(*pro se*)

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Between:	) CASE NUMBER 1:03CV01934
Edward VanGuilder,	) JUDGE: James Robertson
Plaintiff,	) DECK TYPE: Civil Rights
v.	) (non-employment)
United States of America,	) DATE STAMP: 09/15/2003
Defendant.	)

(1). Court jurisdiction is confirmed by 28 USC §§1331, 1345(3), 1345, 1362, 1391(b), 2201 and 2202.

(2). Plaintiff inherited the Mahican aboriginal title to the reservation in the Indian treaty of April 25, 1724, and to Governor's Island. 25 USC §194. *An Act concerning purchases of lands from the Indians,* Stat. Prov. NY 1684, c. 9. *An Act to prevent and make void clandestine and illegal purchases from the Indians,* Stat. Prov. Mass. Bay, 1701-02, c. 11.

(3). The defendant usurps the Indian sovereingty (the constitutional common law right of occupancy and jurisdiction of self-government) sheltering under the said title, by applying the defendant's own domestic law, by condoning the said state's application of the state's domestic law and by clothing the defendant's constituents including the state of New York with an unconstitutional domestic law color of right in relation

to adverse possession. *Constitution*, art. I, §10. *Scott v. Sandford*, 19 How. 393 (1857).

Therefore plaintiff respectfully seeks:

(*a*) a *Worcester v. Georgia*, 6 Pet. 515 (1832), declaration that the defendant's constitutional right of preemption is all the defendant has, and correspondingly its constituents can have, pending the defendant's purchase of the plaintiff's aboriginal title; and,

(*b*) a *Marsh v. Brooks*, 49 us 223, 232 (1850), declaration ejecting adverse possessors from the territory.

September 9, 2003.

/s/ "Edward VanGuilder"

Edward VanGuilder
241 Fox Road
P.O. Box 139
North Granville, N.Y. 12854
(518) 642-2448 fax same.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Edward VanGuilder,	:	
Plaintiff,	:	
v.	:	Civil Action No. 03-1934(JR)
United States of America,	:	
Defendant.	:	

ORDER

For the reasons set forth in the accompanying memorandum, defendant's motion to the dismiss [6] will be **GRANTED,** and plaintiff's motion for summary judgment [16] will be **DENIED AS MOOT**.

It is **SO ORDERED.**

James Robertson
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Edward VanGuilder,	:	
Plaintiff,	:	
v.	:	Civil Action No. 03-1934(JR)
United States of America,	:	
Defendant.	:	

MEMORANDUM

Plaintiff *pro se* Edward Vanguilder claims "aboriginal title to certain lands, including Governor's Island in New York State. VanGuilder names the United States as the sole defendant in a suit that appears to seek the return of those lands. The United States has moved to dismiss on various jurisdictional grounds. Plaintiff opposes dismissal and has moved for summary judgment.

In analyzing whether this Court has jurisdiction to adjudicate plaintiff's claims, it is important to keep in mind that federal district courts are courts of limited jurisdiction and "possess only that power authorized by Constitution and statute." Kokkonen v. Guardian Life Ins. Co. of Am.., 511 U.S. 375, 377 (1994); see also Sheldon v. Sill, 49 U.S. 441, 449 (1850) ('Courts created by statute can have no jurisdiction but such as the statute confers.") A related principle is that the United States, because of its status as a sovereign nation, is immune from suit unless Congress has clearly and unequivocally consented to a court's exercise of jurisdiction. United States v/ Mitchell, 445

U.S. 535, 538 (1850). Therefore, this Court does not have jurisdiction to hear a suit brought against the United States unless Congress has expressly and explicitly waived sovereign immunity. Any such waiver is to be strictly construed. Dept. of Army v. Blue Fox, 525 U.S. 255, 261 (1999).

Plaintiff has the burden of establishing that this Court can exercise jurisdiction over his claim. Gibb v. Buck, 307 U.S. 66, 77 (1939). Even considering his *pro se* complaint as broadly as possible, as I must under Hanes v. Kerner, 404 U.S. 519, 520 (1972), I find that the plaintiff has failed to satisfy this burden. Plaintiff suggests the jurisdiction of this court may b e grounded in 28 U.S.C. §§1331, 1345, 1345, 1362, 1391, 2201, or 2202, but not one of these provisions constitutes a valid waiver of sovereign immunity. Plaintiff must be able to point to a separate statute that waives sovereign immunity. Plaintiff must be able to point to a separate statute that waives immunity with respect to the subject mater of his suit. (For example, a federal employee may bring suit against an agency of the United States fro gender discrimination under Title VII of the Civil Rights Act of 19964, because that statute expressly waives sovereign immunity for such claims. 422 U.S.C. §2409a.) In this case, the Quiet Title Act ("QTA"), 28 U.S.C. §2409a, provides the only means of access to the federal court. See Block v. N.D. ex rel. Bd. of Univ. & Sch. Lands, 461 U.S. 273, 286 (1983). But to make a valid claim under the QTA, the plaintiff must state with particularity "the right, title or interest claimed by the United States." 28

U.S.C. §2409a(d). VanGuilder does not, and apparently cannot, allege any circumstances that would support a finding that his claims, apparently stemming form treaties signed by various sovereigns during the 17th and 18th Centuries, is not time-barred. Nor does plaintiff account for his filing his claim in the District of Columbia in which the property is located. 28 U.S.C. §1331.

Thus, if this Court has subject matter jurisdiction, it is only by application of the QTA and 28 U.S.C. §1331. But, since the QTA manifestly does not apply to this case, plaintiff has failed to state a claim upon which relief may be granted.

An appropriate order accompanies this memorandum.

James Robertson
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5220 **September Term, 2004**
03cv01934
Filed On:
FEB 23 2005

Edward VanGuilder, :
Appellant :
v. :
United States of America, :
Appellee :

BEFORE: Edwards, Henderson, and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the oppositions thereto, and appellant's brief, it is

ORDERED that the motion for summary affirmance be granted. Appellant has not identified any waiver of sovereign immunity other than perhaps the Quiet Title Act that is relevant to his claims, he makes no attempt to demonstrate that the district court erred in holding that he had failed to state a claim under the Act, and he has not established that he is exempt from the requirements of the Act or the more general requirement that the plaintiff show a waiver of sovereign immunity authorizing his claims against the United States. See, e.g., Chayon v. Chao, 355 F.3d

141, 143 (2d Cir. 2004). The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41

Per Curiam
[/s/ initialed]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5220 **September Term, 2004**
03cv01934

Filed On: March 29, 2005 [886436]

Edward VanGuilder, :
Appellant :
v. :
United States of America, :
Appellee :

BEFORE: Edwards, Henderson, and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing , it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: Michael C. McGrail
Deputy Clerk